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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,095	04/08/2004	Koji Fujiwara	1248-0712PUS1	7125
2292 7590 03/12/2009 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER				
STTA, GRANT				
ART UNIT		PAPER NUMBER		
2629				
NOTIFICATION DATE		DELIVERY MODE		
03/12/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/820,095

Applicant(s)

FUJIWARA ET AL.

Examiner

GRANT D. SITTA

Art Unit

2629

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 February 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Sumati Lefkowitz/
Supervisory Patent Examiner, Art Unit 2629

/Grant D Sitta/
Examiner, Art Unit 2629

Continuation of 11. does NOT place the application in condition for allowance because:

1. Applicant's arguments filed 2/05/2009 have been fully considered but they are not persuasive. Applicant asserts that adjusting power based on the number of receiver pulses received during a frame, i.e. frequency of use, not pressure levels is insufficient to or suggest varying the signal based on frequency of use of pressure levels and in response to a changes in pen pressure against the display. Examiner respectfully disagrees. Claim 11 recites, inter alia: "varying the infrared signal in response to a user input related to a frequency of use of pressure levels and in response to changes in pen pressure against the display."
2. Russell states, "The microprocessor of the circuit 44 receives this and controls the pulse width of at least some of the IR pulses transmitted by one or more IR transducers 56 on the circuit board 50, optically coupled to the end cap 30. Accordingly, when the processor 22 of the base 16 receives the signal from the IR transducer 20, the processor 22 can determine how hard the person is pressing down against the substrate 12 based on the pulse width, to thereby determine when the pen tip touches the substrate and how wide the corresponding handwriting line should be when it is electronically generated." (col. 5, lines 40-60) (emphasis added). The IR pulse width of Russell is varied in response to a user input. The pulse width is related to a frequency of use of pressure levels, i.e. if there is no pressure on the tip of the pen the width of the IR signal will be different than if there was pressure on the tip of the pen. The frequency of use of pressure levels could be a frequency of zero, one or multiple uses.
3. Furthermore, Applicant contends that as outlined in the previous filed reply that Russell merely discloses varying the pulse width based on the frequency of received pulse, not on the change of pen pressure against the display. Examiner respectfully disagrees and points to the emphasized part of Russell above.
4. Applicant also asserts that a current number (or the current use) is insufficient to teach or suggest a frequency of use. Examiner respectfully disagrees. All that is need to determine a frequency of use is to take a sample over a period time. Over that period of time no events could occur, one event or multiple events could occur. However, if one event occurs the one event was a current number at one point.
5. In response to Applicant's remarks that the cited references fail to teach or suggest enabling inputs of a series of pen pressure levels in an order of frequency of use. Examiner respectfully disagrees.
6. Applicant first argues that Redford does not disclose enabling inputs of a series of pen pressure levels in an order of frequency of use. And goes on to stated the teaching relied upon by the Examiner are wholly insufficient to teach or suggest pen pressure. However, Redford is not being relied upon to teach pen pressure. Redford is being relied upon to teach a system and method for a controller having a sequence input mode (Redford, fig. 5 (a), (b), and (c)) input means (fig.5 input 1 and input 2) enabling inputs of levels in an order of frequency of use (Redford, fig. 5 (a), (b), and (c)). The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Under these facts, Russell teaches varying pulse width with a series of pen pressure levels (col. 5, lines 40-60) and Redford teaches a controller having a sequence input mode (Redford, fig. 5 (a), (b), and (c)) input means (fig.5 input 1 and input 2) enabling inputs of levels in an order of frequency of use (Redford, fig. 5 (a), (b), and (c)). It would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify Russell to include the use of PWM as taught by Redford in order to control infrared signals since PWM can be used to reduce the total amount of power delivered.
7. The claim 10 rejection is maintained for the reasons stated in the Final Office action and explained above with regards to claim 9. Applicant further asserts that claim 10 requires the infrared transmitter sending a signal that varies with the sensed contact pressure between the input pen and the display device on a manner determined by a sequence input of a user and that the is no discloser that is directed to varying the signal in a manner determined by a sequence input of a user. However, as discussed in the Final Office Action dated 11/13/2009, page 10 Russell teaches varying the signal with the sensed contact pressure between the input pen and the display device. While Redford teaches a manner determined by a sequence input means.
8. In response to applicant's argument, with regards to claim 11, that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., no disclosure in Russell that is directed to varying the signal based on the sensed contact pressure in a manner determined by a sequence input of a user) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993)..